

Indiana Department of Education

Division of Exceptional Learners

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1951.02
COMPLAINT INVESTIGATOR:	Steve Starbuck
DATE OF COMPLAINT:	September 13, 2002
DATE OF REPORT:	October 10, 2002
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	February 5, 2003

COMPLAINT ISSUES:

Whether the Pioneer Regional Schools and the Logansport Area Joint Special Services Cooperative violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically, by:

- a. failing to provide the student with a calculator;
- b. failing to investigate services discussed at a case conference committee (CCC) meeting and failing to inform the parent of the results of the investigation; and
- c. failing to conduct a functional behavioral assessment.

511 IAC 7-17-72 by failing to ensure that the student's teacher of record (TOR) served as a consultant and resource person to all other personnel providing services to the student.

511 IAC 7-27-3(a) by failing to ensure that the CCC meetings had the required participants in attendance.

511 IAC 7-28-4(d) by failing to provide the student and parent with a written notice of the transfer of rights to the student at eighteen years of age at a CCC meeting held no later than the student's seventeenth birthday.

511 IAC 7-27-2(d) by failing to provide the parent with notice of a May 2002 CCC meeting that contained the requirements specified in this citation.

During the course of the investigation, an additional issue was identified, which is:

511 IAC 7-27-6(a)(5) by failing to include in the IEP the projected dates for the initiation of services and program modifications and the anticipated length, frequency, location, and duration of the services and modifications.

FINDINGS OF FACT:

1. The student is seventeen years old, attends the twelfth grade, and has been determined eligible for special education due to an emotional disability. The complainant has been the student's legal guardian since April 1989.

2. The complainant asserts that because she was given incorrect information concerning the times that a calculator could be used as an accommodation, a violation of Article 7 occurred. According to the complainant, school personnel informed her that the student could only have access to a calculator as an accommodation when other students were permitted to use a calculator and during the time that the student took ISTEP tests. Consequently, the three IEPs written for the student prior to May 17, 2002, reflect that the student was only permitted to use a calculator as an accommodation during ISTEP testing. At the CCC meeting convened on May 17, 2002, it was determined that the information previously shared with the complainant regarding the use of a calculator as an accommodation was incorrect, and therefore, the student's May 17th IEP was modified to include the use of a calculator to complete school assignments. The complainant acknowledges that prior to May 17th the student was permitted to use a calculator during ISTEP testing, and that after May 17th the school has implemented the student's IEP as written in regards to the use of a calculator as an accommodation for the student. The complainant signed the four IEPs in question indicating her agreement with the IEPs and the recommendations made by the CCCs.
3. The complainant contends that it was determined at the February 11, 2002, CCC meeting that school personnel would investigate the option of providing wrap around services to the student. The complainant states that she has never received any information back from school personnel concerning these services. The following information is listed in the February 11th IEP: "Wrap around services will be looked into by the TOR." The school counselor reports that school personnel were prepared to provide the complainant with this information at the May 17, 2002, CCC meeting; however, the CCC meeting was concluded before this information could be shared with the complainant. The school counselor reports that the complainant has still not received any information concerning wrap around services from school personnel. The counselor reports that information obtained about wrap around services will be shared with the complainant at a CCC meeting scheduled for October 11, 2002.
4. The complainant asserts that at a CCC meeting convened on February 11, 2002, she requested that a functional behavioral assessment be completed for the student. The complainant reports that school personnel have never advised her as to whether the functional behavioral assessment has been completed. The following information is listed in the February 11th IEP: "New behavior assessment will be completed. Committee will reconvene to discuss options." The school counselor reports that the functional behavioral assessment was not completed by the time that the May 17, 2002, CCC meeting was convened, and that school personnel have not shared any information concerning the functional behavioral assessment with the complainant. The school counselor reports that the functional behavior assessment has been completed and that the results of such will be shared with the complainant at a CCC meeting scheduled for October 11, 2002.
5. The complainant is of the opinion that the TOR has not provided consultative services as specified in the student's IEPs written for the 2001-2002 and 2002-2003 school years. The student's TOR acknowledges that she is the individual that was designated to provide the consultative services specified in the student's IEPs for both school years. The IEP dated March 19, 2001, has an initiation date of March 19, 2001, and an ending date of March 19, 2002. The IEP indicates that consultative services shall be provided to assist personnel in working with the student who has been identified as having an emotional disability. The length, frequency, and location of this service are not specified in the IEP. The IEP dated February 11, 2002, does not have an initiation date or an ending date. The IEP indicates that consultative services to address the student's emotional disability will be provided weekly. The May 17, 2002, IEP has an initiation date of May 20, 2002, and an ending date of February 17, 2003. The IEP reflects that consultative services to address the student's emotional disability shall be provided for thirty minutes each week. Although a log was provided by the TOR to demonstrate the length and frequency that consultative services were provided from May 20th until the complaint was

filed with the Division on September 13, 2002, the log did not verify that consultative services were provided as specified in the May 17th IEP.

6. The complainant alleges that the appropriate participants are not always in attendance at the CCC meetings convened for the student. Four CCC meetings were convened for the student to discuss issues involving the 2001-2002 school year. The IEPs developed at these CCC meetings reflect that the student participated in the general education environment during the entire school year. The IEPs reflect that the appropriate individuals participated in all of the CCC meetings except one. The February 11, 2002, IEP indicates that a general education teacher did not attend the CCC meeting convened on this date. The school counselor acknowledges that a general education teacher was not in attendance at the February 11th CCC meeting.
7. The complainant states that school personnel failed to provide her with written notice of the transfer of rights to the student at eighteen years of age at a CCC meeting held no later than the student's seventeenth birthday. On page 13 of the IEP dated February 11, 2002, there are two boxes listed under the heading, Transfer of Rights. One box is labeled: "Informed at age 17," and the other box is labeled: "Transferred at age 18." Neither box is checked. However, under the heading, Transfer of Rights, the complainant signed her name under the following statement: "I/We have received a verbal and written explanation of the parent/guardian rights." The student turned seventeen years of age on April 13, 2002.
8. The complainant contends that, although she received a notice of the May 17, 2002, CCC meeting, the notice did not contain all of the information as specified in 511 IAC 7-27-2(d). The school provided a copy of the notice e-mailed to the complainant on May 6, 2002. In addition to the anticipated participants, the notice contained the date, time, purpose, and place of the meeting. However, the notice did not contain the following requirements:
 - a. a statement that the parent may bring any other individual of the parent's choosing, whom the parent has determined has knowledge or special expertise regarding the student, including the student, or request the participation of other individuals;
 - b. a statement that the parent has protection under the procedural safeguards of special education law;
 - c. a statement that a copy of the evaluation report will be provided to the parent at the meeting; and
 - d. a statement that the student will be invited to CCC meetings when a purpose of a meeting is the development of a statement of transition service needs or the consideration of needed transition services in accordance with 511 IAC 7-28-3.

CONCLUSIONS:

1. Finding of Fact #2 indicates that, in regards to the use of a calculator, school personnel implemented the student's IEPs for the 2001-2002 and 2002-2003 school years as written. In addition, the complainant signed all of the IEPs in question indicating her agreement with the IEPs and the recommendations made by the CCCs. Therefore, no violation of 511 IAC 7-27-7(a) is found.
2. Finding of Fact #3 reflects that school personnel failed to advise the complainant in a timely manner as to the option of providing wrap around services to the student. Therefore, a violation of 511 IAC 7-27-7(a) is found.
3. Finding of Fact #4 indicates that the functional behavioral assessment was not conducted in a timely manner. Therefore, a violation of 511 IAC 7-27-7(a) is found.

4. Finding of Fact #5 reflects that the duration of services was not specified in one IEP and that the length, frequency, and location of services were not specified in two IEPs. Because there is no way to measure the amount of services that should have been received, it cannot be determined that the student's TOR provided the appropriate amount of consultative services to address the student's needs due to having an emotional disability. In addition, Finding of Fact #5 establishes that the student's May 17, 2002, IEP was not implemented as written in regards to the providing of consultation services. Therefore, violations of 511 7-17-72, 511 IAC 7-27-6(a)(5), and 511 IAC 7-27-7(a) are found.
5. Finding of Fact #6 indicates that, although the student participated in the general education environment during the 2001-2002 school year, a general education teacher failed to attend the CCC meeting convened on February 11, 2002. Therefore, a violation of 511 IAC 7-27-3(a)(4) is found.
6. Finding of Fact #7 establishes that, although neither of the boxes where checked indicating informed at 17 or transferred at 18, the complainant did sign her name at the CCC meeting convened on February 11, 2002, indicating that she had received a verbal and written explanation regarding the transfer of rights to the student at 18 years of age. Therefore, no violation of 511 IAC 7-28-4(d) is found.
7. Finding of Fact #8 reflects that the May 17, 2002, CCC meeting notice failed to contain all of the requirements specified in 511 IAC 7-27-2(d). Therefore, a violation of 511 IAC 7-27-2(d) is found.

The Department of Education, Division of Exceptional Learners, requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Pioneer Regional Schools and the Logansport Area Joint Special Services shall:

1. Inservice all appropriate personnel as to the requirements specified in 511 IAC 7-17-72, 511 IAC 7-27-2(d), 511 IAC 7-27-3(a)(4), 511 IAC 7-27-6(a)(5), and 511 IAC 7-27-7(a). Submit documentation to the Division that all inservice training has been completed no later than November 20, 2002. The documentation shall include a list or an agenda of all issues discussed, any handouts that were distributed, and a list of attendees by name and title.
2. Convene a CCC meeting to determine the need for compensatory services for failing to:
 - a. specify in the IEPs the length, frequency, duration, and location of services;
 - b. conduct a functional behavioral assessment in a timely manner; and
 - c. advise the grandparent in a timely manner of the option of providing the student with wrap around services.

The Case Conference Summary Report will need to reflect that the issue of compensatory services was thoroughly addressed at the CCC meeting. Submit a copy of the Case Conference Summary Report and any revised IEP to the Division no later than November 20, 2002.

3. Revise the CCC Notification form to include all the requirements specified in 511 IAC 7-27-2(d). Submit a copy of the revised form to the Division no later than November 20, 2002.
4. Submit an assurance statement no later than November 20, 2002, that assures:
 - a. all IEPs developed for the student will be implemented as written; and
 - b. that one of the student's general education teachers will attend all CCC meetings convened for the student, if the student is or may be participating in the general education environment.

The assurance statement shall be signed by the director of special education and the student's TOR.